

ORIGINAL

RECEIVED



0000043820



February 28, 2006

2006 MAR -1 P 3: 31

Via Airborne Express

AZ CORP COMMISSION
DOCUMENT CONTROL

Docket Control Center
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007-2996

**Re: Relinquishment of the CPCN of Advanced TelCom, Inc.
Docket No. T-03842A-06-0051**

To Whom It May Concern:

Enclosed for filing with the Commission in Docket No. **T-03842A-06-0051** are the originals, with the requisite number of copies, of the following additional materials:

- Affidavit of Publishing of the Legal Notice that Advanced TelCom, Inc. has petitioned to cancel its Certificate of Public Convenience and Necessity; and
- A copy (not including exhibits) of the Joint Application of GE Business Productivity Solutions, Inc. and Business Productivity Solutions, Inc. for Expedited Approval of Certain Transactions; Docket Nos. T-02719A-04-0760 and T-04280A-04-0760, wherein Footnote 4, starting at the bottom of page 3 of the Application, briefly describes Eschelon Telecom, Inc.'s acquisition of Advanced TelCom, Inc.

Please contact me directly with any further questions or concerns.

Sincerely,

Cathy Murray
Manager, Regulatory Affairs
Phone: (612) 436-1632
Fax: (612) 436-6816
E-mail: camurray@eschelon.com

cc: Marc Stone, ACC Utilities Division

THE ARIZONA REPUBLIC

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS.

LEGAL NOTICE
On January 27, 2006, Advanced TelCom, Inc. filed a petition to cancel its Certificate of Public Convenience and Necessity. Questions concerning this petition can be directed to the Manager of Regulatory Affairs, Eschelon Telecom, Inc., 730 Second Avenue South, Suite 900, Minneapolis, MN 55402, or by facsimile: 612-436-6816. Objections to the petition, Docket No. T-03842A-06-0051, can be filed with the Utilities Division of the Arizona Corporation Commission at 1200 West Washington, Phoenix, AZ 85007-2996.
06117-February 20, 2006

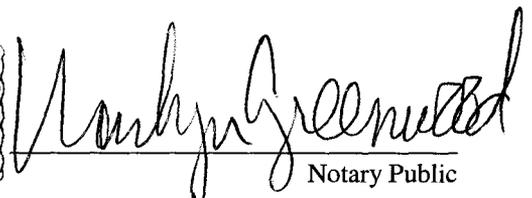
Diana Lopez, being first duly sworn, upon oath deposes and says: That she is a legal advertising representative of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes The Arizona Republic, and that the copy hereto attached is a true copy of the advertisement published in the said paper on the dates as indicated.

The Arizona Republic

February 20, 2006



Sworn to before me this
21ST day of
February A.D. 2006


Notary Public

NEW APPLICATION

BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

MARC SPITZER
CHAIRMAN
WILLIAM A. MUNDELL
COMMISSIONER
MIKE GLEASON
COMMISSIONER
JEFF HATCH-MILLER
COMMISSIONER
KRISTIN K. MAYES
COMMISSIONER

2004 OCT 21 P 3:37

Arizona Corporation Commission
DOCKETED

AZ CORP COMMISSION
DOCUMENT CONTROL

OCT 21 2004

DOCKETED BY *CM*

IN THE MATTER OF THE JOINT APPLICATION OF)
GE BUSINESS PRODUCTIVITY SOLUTIONS, INC.) Docket No. T-02719A-
AND BUSINESS PRODUCTIVITY SOLUTIONS, INC.)
FOR EXPEDITED APPROVAL OF CERTAIN) Docket No. T _____
TRANSACTIONS)
T-02719A-04-0760 ✓
T-04280A-04-0760

VERIFIED JOINT APPLICATION AND REQUEST FOR EXPEDITED TREATMENT

GE Business Productivity Solutions, Inc. ("GEBPS") and Business Productivity Solutions, Inc. ("BPS") (together, "Applicants"), through their undersigned counsel, respectfully request that the Arizona Corporation Commission ("Commission") grant them authority to consummate a transaction involving the transfer of substantially all of the assets of GEBPS, including the GEBPS customer base, to BPS without interruption of service. Pursuant to the terms of an Asset Purchase Agreement ("Agreement") dated October 13, 2004, as described in more detail below, BPS's ultimate parent company, Eschelon Telecom, Inc. ("ETI"), will acquire substantially all of the assets of GEBPS, including the GEBPS customer base and, where necessary, state telecommunications authorizations, including GEBPS's Certificate of Convenience and Necessity in Arizona, and immediately transfer these assets to BPS (the

“Transaction”).¹ In Arizona, however, because GEBPS is solely a reseller of services, there are no physical assets that are part of this transaction. Thus, Applicants request that the Commission approve the transfer of GEBPS’s Certificate of Convenience and Necessity granted in Decision No. 62410 to BPS so that BPS can provide service to the existing customers of GEBPS, and, to the extent required, approve the transfer of customers from GEBPS to BPS.

After consummation of the Transaction, including the transfer of all of the GEBPS customers to BPS, GEBPS will no longer offer telecommunications services in Arizona, and, therefore, GEBPS requests authority to discontinue the provision of telecommunications services effective as of the date of the customer transfer. The proposed Transaction is not expected to result in any loss or impairment of service to any of the customers of GEBPS. Customers will continue to receive their existing services at the same rates, terms and conditions and any future changes in the rates, terms and conditions of service will be made consistent with Commission requirements. The only change will be in the customers’ service provider.

The Applicants respectfully request *expedited* treatment and consideration of this Application so that the Applicants’ business plans can be implemented, which business plans include consummation of the Transaction on or about *December 31, 2004*.² Thus, Applicants

¹ Eschelon Telecom of Arizona, Inc. received a partial waiver of the Affiliated Interests Rules in Decision No. 64737. Because this transaction will not have the effect of raising any maximum rates for Eschelon Telecom of Arizona, Inc., the waiver granted to Eschelon Telecom of Arizona, Inc. should apply to this transaction and make approval of the reorganization of Eschelon that will occur as part of this transaction unnecessary. Further, GEBPS is not and BPS will not be a Class A utility, making the Affiliated Interests Rules inapplicable to these entities.

² In order to ensure that the GEBPS customers continue to receive high quality services pending closing, Eschelon (as that term is defined hereinafter) or one of its subsidiaries may, should it be necessary and under certain conditions, provide certain management and related services to GEBPS on an interim basis until all required regulatory approvals and consents are received. BPS would provide any such services on behalf of GEBPS and subject to GEBPS’ direction and control in a manner consistent with the certificates and tariffs of GEBPS, and applicable law and regulations.

respectfully request that the Commission grant all relief sought herein on or before December 31, 2004.

In support of this Application, Applicants respectfully provide the following information:

I. APPLICANTS

A. GE Business Productivity Solutions, Inc.

GEBPS is a Georgia corporation. GEBPS is a direct, wholly owned subsidiary of General Electric Capital Corporation, which is a direct, wholly owned subsidiary of General Electric Capital Services, Inc., which is a direct, wholly owned subsidiary of the ultimate parent corporation, General Electric Company ("GE"), a New York corporation headquartered at 3135 Easton Turnpike, Fairfield, Connecticut 06431. GE is a widely held public corporation, and one of the largest and most diversified industrial corporations in the world. GEBPS is authorized to provide resold long distance telecommunications services virtually nationwide, including in Arizona.³ GEBPS also holds Section 214 authorizations from the Federal Communications Commission to provide domestic and international resold switched services. After consummation of the Transaction, all of GEBPS's customers will have been transferred to BPS. In addition, GEBPS will cease providing telecommunications services and will no longer require its authorization to provide telecommunications services in Arizona.

GE also has two other subsidiary telecommunications carriers, Advanced TelCom, Inc. ("ATI") and Shared Communications Services, Inc. ("SCS"). The customers and authorizations of ATI and SCS are not the subject of the instant Application; ATI and SCS will continue to provide service as they have in the past pursuant to their existing authorizations.⁴

³ The Commission authorized GEBPS to provide long distance resale services in Decision No. 62410, dated April 3, 2000.

⁴ Simultaneously with the signing of the Agreement, the parent company of ATI and SCS, Advanced TelCom Group, Inc. ("ATGI"), and ETI signed a Stock Purchase Agreement

B. Business Productivity Solutions, Inc.

BPS, a newly formed Minnesota corporation incorporated on October 7, 2004, is located at 730 2nd Avenue South, Suite 900, Minneapolis, Minnesota 55402, (612) 376-4400 (telephone), (612) 436-6816 (facsimile). BPS is a direct, wholly owned subsidiary of Eschelon Operating Company ("OPCO"), a Minnesota corporation, which in turn is a direct, wholly owned subsidiary of ETI, a Delaware corporation, the ultimate parent corporation. OPCO has several direct, wholly owned subsidiaries that offer telecommunications services in various states.⁵ ETI and its subsidiaries, collectively "Eschelon", all headquartered at the above address, provide voice, data, Internet services and business telephone systems to over 38,000 customers and have over 225,000 access lines⁶ in service. Eschelon provides local and long distance facilities-based service in 12 markets in 7 states, including Arizona.⁷

As noted above, BPS is applying for the transfer of GEBPS's authority to provide long distance resale services in Arizona so that it can serve the existing customers of GEBPS. As one of the fastest growing telecommunications companies in the nation, currently providing service

whereby ETI will acquire all of the issued and outstanding shares of common stock of ATI, and thereby, SCS. Upon completion of this transaction, ETI will be the new ultimate parent company of ATI and SCS. As stated above, Eschelon Telecom of Arizona, Inc. received a partial waiver of the Affiliated Interests Rules in Decision No. 64737. Because this stock purchase transaction will not have the effect of raising any maximum rates for Eschelon Telecom of Arizona, Inc., the waiver granted to Eschelon Telecom of Arizona, Inc. should apply to this transaction and make approval of the reorganization of Eschelon that will occur as part of this transaction unnecessary. Further, SCS and ATI are not Class A utilities, making the Affiliated Interests Rules inapplicable to these entities.

⁵ Eschelon Telecom of Minnesota, Inc., Eschelon Telecom of Washington, Inc., Eschelon Telecom of Colorado, Inc., Eschelon Telecom of Nevada, Inc., Eschelon Telecom of Arizona, Inc., Eschelon Telecom of Utah, Inc. and Eschelon Telecom of Oregon, Inc.

⁶ Eschelon defines "access lines" as 64kbps channels. Consequently, for example, a T-1 line will be counted as multiple access lines depending upon the number of 64kbps channels established on the circuit.

⁷ The Commission authorized Eschelon Telecom of Arizona, Inc. to provide local and long distance telecommunications services in Decision No. 62751, dated July 25, 2000.

in 7 states, Eschelon has the financial, managerial and technical qualifications needed to provide quality telecommunications services to customers in Arizona, as described further below. BPS's Articles of Incorporation are appended hereto as *Exhibit A*. BPS currently is in the process of becoming authorized to transact business in Arizona as a foreign corporation, but it is not licensed to provide telecommunications services in any state at this time. Applicants will later file the appropriate documentation from the Arizona Secretary of State showing BPS's authorization to transact business in Arizona.

II. DESIGNATED CONTACTS

The designated contacts for this Application are:

Thomas H. Campbell
Michael T. Hallam
Lewis and Roca LLP
40 North Central Avenue
Phoenix, Arizona 85004
(602) 262-5723 (telephone)
(602) 734-3841 (facsimile)

Brad E. Mutschelknaus, Esq.
Melissa S. Conway, Esq.
KELLEY DRYE & WARREN LLP.
1200 19th Street, N.W., Fifth Floor
Washington, D.C. 20036
(202) 955-9600 (telephone)
(202) 955-9792 (facsimile)

with copies to:

Victor A. Allums
Meredith H. Gifford
GE BUSINESS PRODUCTIVITY SOLUTIONS, INC.
3225 Cumberland Boulevard, Suite 920
Atlanta, Georgia 30339
(770) 541-5781 (Victor Allums telephone)
(770) 541-5782 (Meredith Gifford telephone)
(770) 541-5703 (facsimile)

J. Jeffery Oxley
ESCHELON TELECOM, INC.
730 2nd Avenue, South, Suite 900
Minneapolis, MN 55402
(612) 436-6692 (telephone)
(612) 436-6792 (facsimile)

III. THE TRANSACTION AND TRANSFER OF CUSTOMERS

On October 13, 2004, GEBPS and ETI signed the Agreement providing for ETI's acquisition of substantially all of the assets of GEBPS, including the GEBPS customers, which are to be transferred immediately to BPS. The proposed transfer of customers from GEBPS to BPS will have no adverse impact on customers. Following completion of the Transaction, BPS will provide long distance resale telecommunications services to the former customers of GEBPS. The GEBPS customers will continue to receive their existing services at the same rates, terms and conditions that they have prior to the transfer and any future changes in the rates, terms and conditions of service will be made consistent with Commission requirements. To ensure a seamless transition and avoid customer confusion or inconvenience, Applicants will provide advance written notice to the affected customers at least sixty (60) days prior to the transfer, explaining the change in service provider. A copy of the notification letter that will be sent to the affected customers is appended hereto as *Exhibit B*.

IV. QUALIFICATIONS OF BPS

The Applicants respectfully request that the Commission approve the transfer of GEBPS's existing telecommunications authorization in Arizona to BPS. As noted above, GEBPS is authorized to provide long distance resale services pursuant to the authorization granted by the Commission on April 3, 2000 in Decision No. 62410. As BPS is not currently certificated in Arizona, the transfer of GEBPS's authority to BPS is necessary to enable BPS to begin providing service to GEBPS's existing customers as part of the Transaction. Appended hereto as *Exhibit A* is a copy of BPS's Articles of Incorporation. As noted above, BPS is in the process of obtaining its qualification to transact business in Arizona as a foreign corporation and

will late-file a copy of this documentation upon receipt. BPS has no plans to construct outside plant or loop distribution facilities or any other facilities at this time; BPS will offer only resold services.

As demonstrated below, BPS has the requisite financial, managerial, and technical competence to provide telecommunications service in Arizona and grant of the proposed transfer of GEBPS's operating authority is in the public interest. The Commission has already examined the financial, managerial and technical qualifications of BPS's affiliate, Eschelon Telecom of Arizona, Inc., to provide telecommunications services – BPS is backed by the same qualifications from their parent company, ETI, and will provide the same high quality services to customers. ETI's qualification information is already on file with the Commission in Docket No. T-03406A-99-0742 and is incorporated herein by reference.

A. Financial Qualification

BPS is financially qualified to provide telecommunications services in Arizona. BPS, with the financial backing of its ultimate parent company, ETI, has access to the financing and capital necessary to conduct its telecommunications operations and to fulfill any obligations it may undertake with respect to the operation and maintenance of its services. Submitted as *Exhibit C* is ETI's SEC Form 10-Q for the quarterly period ended June 30, 2004, which includes consolidated balance sheets for December 31, 2003 and June 30, 2004, consolidated statements of operations for the three months and six months ended June 30, 2004, consolidated statements of cash flows for the six months ended June 30, 2003 and 2004, and notes to the consolidated statements. ETI is a privately-held company, but because of a recent bond issue, ETI is a public reporting company with filing obligations with the SEC. As noted in the 10-Q, ETI has increased its annual revenue from \$41.7 million for the year ended December 31, 1999 to \$141.1

million for the year ended December 31, 2003, and increased gross profits from \$14.8 million to \$80.3 million over the same period. ETI has been cash-flow positive three out of four quarters since September 2003 and is EBITDA positive in all of its markets. Clearly, ETI is financially qualified to provide quality telecommunications services to customers in Arizona.

B. Managerial and Technical Qualification

BPS has the requisite technical and managerial qualifications to provide telecommunications services in Arizona. As noted above, Eschelon already is authorized to provide telecommunications services in 7 states, including Arizona, provides voice, data, Internet services and business telephone systems to over 38,000 customers and has over 225,000 access lines in service. Eschelon has successfully provided a host of local and long distance telecommunications services over the past several years. Eschelon operates a reliable and diverse voice and data network using proven technology by leading manufacturers which includes: transport diversity to ensure the highest level of network reliability; local and centralized technical resources; and 24 by 7 network monitoring. Both sales and service personnel are trained professionals. For customer inquiries, the toll-free customer service number will be 1-800-285-6100 after consummation of the Transaction. Eschelon has an experienced management team with more than 100 years of combined telecommunications experience. As the resumes appended hereto as *Exhibit D* show, Eschelon's management team possesses significant experience in successfully running a telecommunications business. Collectively, members of Eschelon's management team have designed, managed, and/or operated advanced telecommunications facilities throughout the United States. These already formidable capabilities will be augmented by the facilities and personnel obtained in the Transaction.

V. ADOPTION OF GEBPS'S EXISTING TARIFF

In connection with the transfer of GEBPS's authorization to BPS, the Applicants also request that BPS be allowed to adopt GEBPS's existing tariff, subject only to a minor name change to reflect the new name of the issuing carrier, BPS. None of the rates, terms, and conditions in GEBPS's existing tariff will change at this time. The Applicants respectfully request that the tariff be allowed to take effect at the time of the customer transfer to BPS, to avoid any gap in service to customers. This way, existing GEBPS customers will continue to receive the same services at the same rates, terms and conditions as at present.

VI. DISCONTINUANCE OF SERVICE OF GEBPS

As noted previously, upon completion of the Transaction, GEBPS will no longer be offering telecommunications services in Arizona, and GEBPS, therefore, requests that the Commission grant it authority to discontinue service upon the transfer of its customers to BPS. The Applicants will provide notice of the transfer of service to the affected GEBPS customers at least 60 days prior to the transfer. A copy of the notification letter is appended hereto as *Exhibit B*.⁸ In addition, the Applicants intend to publish legal notice in a newspaper with statewide circulation as required pursuant to Commission regulations.

GEBPS notes that Qwest LD Corp. is providing service to customers in the geographic area affected by this Application. Additionally, numerous other interexchange service providers are certificated in the state of Arizona and are providing such service.⁹

⁸ As set forth in the notification letter attached as Exhibit B, customers are free to select a new service provider at any time. Accordingly, Joint Applicants submit that requiring the parties to send a separate 90-day notice to customers allowing them to switch service providers without regard to contractual obligations is unnecessary and should not be applied in this case.

⁹ A list of these providers may be found on the Commission's website at www.cc.state.az.us/utility/telecom/industry.htm.

VII. PUBLIC INTEREST CONSIDERATIONS AND REQUEST FOR EXPEDITED PROCESSING

The Applicants submit that the Transaction is in the public interest. It is expected that the Transaction will increase competition in the Arizona telecommunications market by strengthening Eschelon's position as an effective and multifaceted telecommunications carrier. As noted above, the Transaction is part of a larger transaction whereby ETI, BPS's ultimate parent company, will acquire ownership and control of two GEBPS affiliates, ATI and SCS. ETI's acquisition of these operating subsidiaries of GE, including the customer base of GEBPS, will allow Eschelon to combine its financial, technical and market resources and expertise with that of ATI, SCS and GEBPS, thereby enhancing its ability to provide reliable, competitively priced services to customers in Arizona. The public interest benefits applicable to ETI's acquisition of ATI and SCS, GEBPS's affiliates, will benefit the existing GEBPS customers as they will be joining a stronger Eschelon family of companies, all of which are focused exclusively on telecommunications services.

The Applicants emphasize that, following the transfer, the former GEBPS customers will continue to receive services from an experienced and qualified carrier, which services will be consistent with the quality of services currently provided by GEBPS. GEBPS provides Centrex-based service to its business customers and Eschelon has many years of experience supporting Centrex. GEBPS resells long distance services to its residential and business customers and Eschelon has extensive experience with long distance resale. The companies anticipate that customers will experience a seamless transition of service provider. Further, these customers

will be sufficiently notified of the Transaction and their rights. Hence, the public interest will be served by BPS's provision of services to the transferred GEBPS customers.

In sum, grant of this Application will serve the public interest by furthering competition in the Arizona telecommunications market, as a result of the strengthened competitive position of Eschelon. Applicants desire to complete the proposed transaction by *December 31, 2004*. To that end, Applicants respectfully request that the Commission expedite the processing and grant of approval of this Application as soon as possible.

VIII. CONCLUSION

The Applicants respectfully request that the Commission approve the transfer of GEBPS's long distance resale Certificate of Convenience and Necessity to BPS and the adoption of GEBPS's tariff by BPS effective as of *December 31, 2004*, and GEBPS's request to abandon service once its customers have been fully transferred to BPS.

Respectfully submitted this 21st day of October, 2004.

LEWIS AND ROCA



Thomas H. Campbell
Michael T. Hallam
40 N. Central Avenue
Phoenix, Arizona 85004
Counsel for Joint Applicants

ORIGINAL AND fifteen (15) copies
of the foregoing hand-delivered
this 21st day of October, 2004, to:

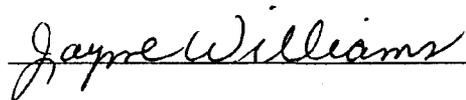
Arizona Corporation Commission
Utilities Division – Docket Control
1200 W. Washington Street
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered
this 21st day of October, 2004,
to:

Lyn Farmer, Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Christopher Kempley, Esq.
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

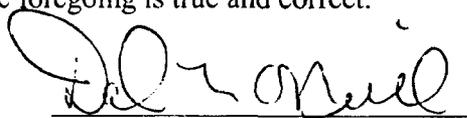
Ernest Johnson
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007



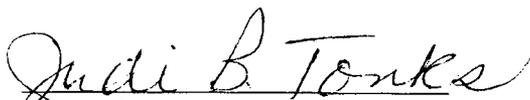
VERIFICATION

I, David M. O'Neill, am President of GE Business Productivity Solutions, Inc. and am authorized to represent it and to make this verification on its behalf. The statements in the foregoing document relating to this company, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

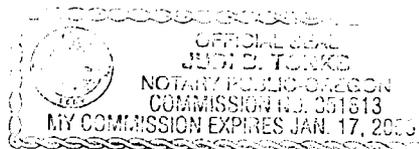
I declare under penalty of perjury that the foregoing is true and correct.



Subscribed and sworn to before me this 15 day of
October 2004.



Notary Public



My Commission expires: 1-17-2006

VERIFICATION

I, Jeffery Oxley, am Executive Vice President of Law and Policy of Eschelon Telecom, Inc. and am authorized to represent it and its subsidiaries, including Business Productivity Solutions, Inc., and to make this verification on their behalf. The statements in the foregoing document relating to this company and its subsidiaries, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.



Subscribed and sworn to before me this 14th day of
October 2004.



Derrick J. Stagner
Notary Public

My Commission expires: 1/31/05